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September 2, 2004

Via Electronic Submission

The Honorable Michael K. Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Exclusions 4 and 5 and the Nationwide Programmatic Agreement
WT Docket No. 03-128**

Dear Chairman Powell:

I represent the Tower Siting Policy Alliance (the "Alliance"), a group of wireless carriers and tower companies concerned with federal policies that impact the siting of communications towers and facilities. Members of the Alliance include American Tower Corporation, Cingular Wireless, T-Mobile USA, SBA Communications and Western Wireless.

As you are aware, the Nationwide Programmatic Agreement ("NPA"), subject of the Commission's Notice of Proposed Rulemaking ("NPRM") released June 9, 2003, has been awaiting Commission action for some time. The version of the NPA that was released in the NPRM was the product of more than two years' worth of labor, on the part of many parties, including the Commission, the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, CTIA, NAB, PCIA, several individual industry representatives and others. The NPRM generated scores of comments and reply comments and has been the focus of innumerable discussions, exchanges and *ex parte* presentations since that time.

The NPRM version of the NPA was far from a perfect document from any perspective. It was the product of many contentious hours of discussion and many compromises on the part of all participants in the Telecommunications Working Group. But it was a document that attempted to tailor and streamline the Section 106 process to the realities of the industry and the FCC's regulatory responsibilities, and we believe it would do so much better than do the current ACHP rules. For that

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reason, the Alliance believes that the sincere and productive work that was put into the NPA should not go to waste. Although none in industry are aware of what changes the Commission may have made to the NPA, and therefore industry must reserve the right to challenge any objectionable new provisions, nevertheless these industry members believe that the Commission should adopt the NPA as soon as possible.

We are informed that certain controversial provisions in the current version of the NPA may be inhibiting the full support of one or more members of the Commission, and that this problem has delayed, and could even prevent the NPA's adoption. The Alliance believes that such a result would not be in the best interests of either the industry or the other stakeholders with an interest in this proceeding.

Recently, the National Trust for Historic Preservation submitted to you a letter addressing two of the most controversial provisions in the NPA, Exclusion 4, dealing with industrial and commercial areas, and Exclusion 5 dealing with utility corridors and rights of way. In their letter, in what they said was an effort to "move forward on resolving some of the disputed issues," the Trust accepted the language for Exclusion 5 on rights-of-way that was originally proposed by industry interests as a compromise from the NPRM version of this exclusion. In addition, the Trust proposed new language for Exclusion 4 on industrial areas.

Briefly, the original Exclusion 4 from the NPRM would have excluded from Section 106 review towers under 400 feet in height to be located on industrial properties larger than 10,000 square feet, where the tower would be no closer than 200 feet from a structure older than 45 years. We understand that this exclusion with these terms was generally approved by the ACHP and the NCSHPO leadership as a part of their approval of the NPA generally. As such, our Alliance is supportive of this exclusion and would be happy if it were included in the NPA.

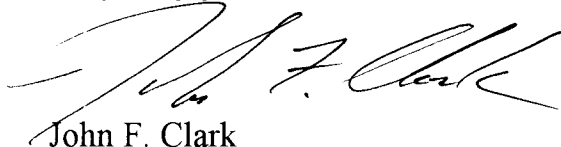
The Trust proposal, on the other hand, would exclude from Section 106 review towers 125 feet or less in height, to be located on a property containing one or more significant structures at least 80,000 square feet in size, where the tower would be no closer than 500 feet from a historic property or district. Obviously, these terms are much more restrictive than the exclusion in the NPRM. They would, however, still potentially allow exclusion of a not insignificant number of towers to be located in industrial areas.

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If the terms of this exclusion and the controversy it has generated are preventing Commission agreement on the NPA, the Tower Siting Policy Alliance believes that the NPRM-version of Exclusion 4 offers room for a compromise that would not do violence to the goals of the NPA or harm to the industry, and that could still provide an exclusion of real value.

Accordingly, this industry group will support the best and most inclusive reasonable compromise available for the industrial area exclusion that will allow prompt adoption of the NPA. If the language proposed by the Trust will achieve that goal, we can accept inclusion of that proposal in the NPA.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Clark". The signature is fluid and cursive, with a large initial "J" and "C".

John F. Clark
Counsel to the Tower Siting Policy Alliance

JFC:jfc

Electronic Copies to:

Commissioner Kathleen Abernathy
Commissioner Kevin Martin
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